

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7632

In The
United States Court of Appeals
For The Second Circuit

NEW WATCH-DOG COMMITTEE, THOMAS M. IANDOLI, Ray Cannon, James Nitecki, Ernesto Isaac, Peter Behrens, Anthony Fasolina, Al Bernstein, Matthew Riccardello, Harvey McLemore, Earl Winthal and John Hajek, on behalf of themselves individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

vs.

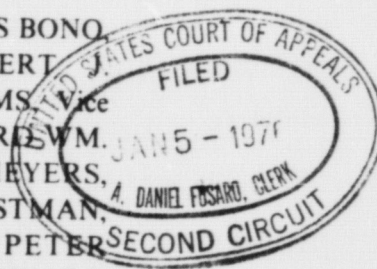
HARRY VAN ARSDALE, JR., President, CHARLES BONO BEN GOLDBERG, HARRY MENDEZ, ROBERT PANCALDO, ELIAS RICK, HOWARD WILLIAMS, Vice Presidents, JOSEPH PARADISE, Secretary, RICHARD W.M. ROGERS, SR., Recording Secretary, HERMAN MEYERS, Treasurer, SID PACK, LUIS PEREZ, SAM EASTMAN, LEONARD FINE, ALBERT A. FOSTER, PETER TANNENBAUM, ARTHUR STRICKLAND, EDWARD ZARR, Executive Council Members, as officers of the NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO, and individually; NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO GEORGE MEANY, President, LANE KIRKLAND, Secretary Treasurer, JOSEPH D. KEENAN, PAUL HALL, PAUL JENNINGS, A. F. GROSPIRON, PETER BOMMARITO, FREDERICK O'NEAL, JERRY WURF, JAMES T. HOUSEWRIGHT, MARTIN J. WARD, JOSEPH P. TONELLI, C. L. DELLUMS, RICHARD F. WALSH, I. W. ABEL, MAX GREENBERG, MATHEW GUINAN, PETER FOSCO, FLOYD E. SMITH, S. FRANK RAFTERY, GEORGE HARDY, WILLIAM SIDELL, ALBERT SHANKER, FRANCIS S. FILBEY, LEE W. MINTON, HUNTER P. WHARTON, JOHN H. LYONS, C. L. DENNIS,

JOINT APPENDIX

(Cont'd)

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PAGINATION AS IN ORIGINAL COPY

THOMAS GLEASON, LOUIS STULBERG, ALEXANDER J. ROHAN, AL. H. CHESSER, MURRAY H. FINLEY, SOL STETIN, GLENN E. WATTS, Executive Council Members, as officers of the American Federation of Labor and Congress of Industrial Organizations, and individually; the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Defendants-Appellees.

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DOCKET ENTRIES

Judge Gagliardi New Watch Dog, L. Webster, et al. vs. Harry Van Arsdale, Jr. et al.

- (1) Filed complaint and issued summons.
- (2) Filed Order to Show Cause for Preliminary Injunction restraining deft. union NYC Tax Drivers Union, Local 3036, AFL-CIO from implementing proposed dues increase intended by union to be effective 11/1/75 etc. ret. km. 2804, 10/16/75, 2:00 p.m. Gagliardi, J.
- (3) Filed Affidvt of service by Vernon Dayson of Order to Show Cause Affidvt, Summons & Complaint upon Donald F. Menagh on 10/7/75.
- (4) Filed Affidvt of Lane Kirkland for Deft. AFL-CIO et al in opposition to motion for preliminary injunction.
- (5) Filed Affidvt by Zach Lonstein for Deft. Local 3036
- (6) Filed " " Robert J. Pancaldo
- (7) Filed Memorandum of Law on behalf of debts AFL-CIO, George Meany, et al in opposition to motion for preliminary injunction.
- (8) Filed Pltff's Memorandum of Law.
- (9) Filed pltff's reply memorandum of law in support of motion for summary judgment.
- (10) Filed OPINION#43288. Pltffs' motion for preliminary relief is denied & pendent state claims are dismissed. So Ordered. Gagliardi, J. (mn)
- (11) Filed ORDER that Summary Judgment be granted to debts. Gagliardi, J. (mn) -- Judgment entered -- Clerk -- ent. 10-30-
- (12) Filed Pltffs Notice of appeal from Summary Judgment in favor of debts dated 10/29/75 and entered on or about 10/30/75 (mailed copy to J. Albert Woll; Waldman & Waldman; Donald F. Menagh, Esqs. on 11/11/75)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW WATCH-DOG COMMITTEE, THOMAS M. IANDOLI,
Ray Cannon, James Nitecki, Ernesto Isaac, Peter
Behrens, Anthony Fasolina, Al Bernstein, Matthew
Riccardello, Harvey McLemore, Earl Wintal and
John Hajek

on behalf of themselves individually and
on behalf of all others similarly situated,

Plaintiffs,

-against-

HARRY VAN ARSDALE, JR., President, CHARLES BONO, BEN GOLDBERG,
HARRY V. Z., ROBERT J. PANCALDO, ELIAS RICK, HOWARD WILLIAMS,
Vice Presidents, JOSEPH PARADISE, Secretary, RICHARD WM. ROGERS, SR.,
Recording Secretary, HERMAN MEYERS, Treasurer, SID PACK, LUIS PEREZ,
SAM EASTMAN, LEONARD FINE, ALBERT A. FOSTER, PETER TANNENBAUM, ARTHUR
STRICKLAND, EDWARD ZARR, Executive Council Members, as officers of
the NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO, and
individually; NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO
GEORGE MEANY, President, LANE KIRKLAND, Secretary Treasurer, JOSEPH D.
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FREDERICK O'NEAL, JERRY WURF, JAMES T. HOUSEWRIGHT, MARTIN J. WARD,
JOSEPH P. TONELLI, C. L. DELLUMS, RICHARD F. WALSH, I. W. ABEL, MAX
GREENBERG, MATHEW GUINAN, PETER FOSCO, FLOYD E. SMITH, S. FRANK RAFTERY,
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MINTON, HUNTER P. WHARTON, JOHN H. LYONS, C. L. DENNIS, THOMAS GLEASON,
LOUIS STULBERG, ALEXANDER J. ROHAN, AL. H. CHESSER, MURRAY H. FINLEY,
SOL STETIN, GLENN E. WATTS, Executive Council Members, as officers of the
American Federation of Labor and Congress of Industrial Organizations, and
individually; the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS,

Defendants.

ORDER TO SHOW CAUSE
(Preliminary
Injunction)

75 Civ. 4913

LC

ORDER TO SHOW CAUSE (PRELIMINARY INJUNCTION)

UPON the Summons and Verified Complaint herein, plaintiff's affidavit and the Exhibits in support of plaintiffs' motion for a Preliminary Injunction, it is

ORDERED, that the defendants or their attorneys Show Cause at a Motion term of this Court, to be held in Room 2804 in the United States Courthouse, Foley Square, New York, New York on the 16th day of October, 1975 at 2:00 p.m. o'clock in the afternoon of that day or as soon thereafter as counsel can be heard, WHY a Preliminary Injunction PURSUANT TO F.R.C.P. 65 (a) should not be issued pursuant to the Federal Rules of Civil Procedure:

1) Restraining the defendant union, New York City Taxi Drivers Union, Local 3036, AFL-CIO (herein called the "Union"), its officers and Executive Council from implementing a proposed dues increase intended by the union to be effective November 1, 1975;

2) Restraining the defendant Union and its officers and Executive Council from denying and continuing to deny the plaintiffs and all others similarly situated the right to vote upon the said dues increase by secret ballot at a membership meeting called upon reasonable notice or in a secret ballot membership referendum;

3) Restraining the defendant union, its officers and Executive Council from denying and continuing to deny the plaintiffs and all others similarly situated the right to express their views, debate, give their opinions, meet and assemble with other members to discuss at a business meeting of the union the issue of the dues increase;

4) Restraining the defendant union, its officers and Executive Council from denying and continuing to deny the plaintiffs and all others similarly situated the right to express their views, debate, give their opinions, meet and assemble with other members to discuss the proposed dues increase;

5) Requiring the defendant union to submit the proposed dues increase to the membership for approval by, (1) a secret ballot by a majority vote of the members in good standing voting at a general or special meeting of the membership, after reasonable notice of the intention to vote upon such question of the dues increase, or (2) a majority vote upon the question of the dues increase of the member in good standing voting in a membership referendum conducted by secret ballot;

6) Declaring the proposed dues increase to be of no force and effect until the secret ballot vote by the membership;

7) Declaring the said proposed dues increase null and void if rejected by the membership after the secret ballot vote of the membership as requested herein; and it is further

ORDERED that personal service of a copy of this Order to Show Cause, together with a copy of the papers attached hereto, or service by Registered or Certified Mail, Return Receipt Requested of a copy of this Order to Show Cause, together with a copy of the papers attached hereto, on the defendants or their attorneys, on or before 5:00 p.m. o'clock in the after noon of the 7th day of October, 1975, shall constitute due and sufficient service of this Order.

Dated: New York, New York

October TH, 1975

Leo P. Caplan
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW WATCH-DOG COMMITTEE, THOMAS M. IANDOLI,
Ray Cannoc., James Nitecki, Ernesto Isaac, Peter
Behrens, Anthony Fasolina, Al Bernstein, Matthew
Riccardello, Harvey McLemore, Earl Winthal and
John Hajek

AFFIDAVIT

on behalf of themselves individually and
on behalf of all others similarly situated,

Plaintiffs,

-against-

HARRY VAN ARSDALE, JR., President, CHARLES BONO, BEN GOLDBERG,
HARRY MENDEZ, ROBERT J. PANCALDO, ELIAS RICK, HOWARD WILLIAMS,
Vice Presidents, JOSEPH PARASE, Secretary, RICHARD WM. ROGERS, SR.,
Recording Secretary, HERMAN MEYERS, Treasurer, SID PACK, JIM PEREZ,
SAM EASTMAN, LEONARD FINE, ALBERT A. FOSTER, PETER TANNENBAUM, ARTHUR
STRICKLAND, EDWARD ZARR, Executive Council Members, as officers of
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individually; NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO
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SOL STETIN, GLENN E. WATTS, Executive Council Members, as officers of the
American Federation of Labor and Congress of Industrial Organizations, and
individually; the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS,

Defendants.

75 Civ. 4918

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

THOMAS M. IANDOLI, being duly sworn, deposes and says:

I have been and am active in the NEW WATCH-DOG COMMITTEE, an employee organization composed of members of the Union whose purpose is to promote and encourage democracy within this union, just and equitable treatment of all members and reform and correction of abuses within the union.

1) Restraining the defendant union, its officers and Executive Council from implementing a proposed dues increase intended by the union to be effective November 1, 1975;

3) Restraining the defendant union, its officers and Executive Council from denying and continuing to deny the plaintiffs and all others similarly situated the right to express their views, debate, give their opinions, meet and assemble with other members to discuss at a business meeting of the union the issue of the dues increase;

4) Restraining the defendant union, its officers and Executive Council from denying and continuing to deny the plaintiffs and all others similarly situated the right to express their views, debate, give their opinions, meet and assemble with other members to discuss the proposed dues increase;

5) Requiring the defendant union to submit the proposed dues increase to the membership for approval by, (1) a secret ballot by a majority vote of the members in good standing voting at a general or special meeting of the membership, after reasonable notice of the intention to vote upon such question of the dues increase, or (2) a majority vote upon the question of the dues increase of the members in good standing voting in a membership referendum conducted by secret ballot;

6) Declaring the proposed dues increase to be of no force and effect until the secret ballot vote by the membership;

7) Declaring the said proposed dues increase null and void if rejected by the membership after the secret ballot vote of the membership as requested herein.

Plaintiffs and others similarly situated are being deprived by the union, its officers and Executive Council of their rights under the Labor Management Reporting and Disclosure Act of 1959 (herein

called the LMRDA) and the National Labor Relations Act (herein called the NLRA) in that the plaintiffs and others similarly situated are being deprived of their right to discuss, participate in arguments, debate and give their opinion as to the proposed dues increase which should be the business of a union meeting. Further, plaintiffs and others similarly situated are being deprived of the right to vote on the proposed increase, which vote is guaranteed by the LMRDA, the AFL-CIO Constitution, the Directly Affiliated Local Union (herein called the DALU) Rules, and the Union's own Constitution and By-Laws.

Plaintiff NEW WATCH-DOG COMMITTEE is an employee organization which has recently been successful in having many of its members elected to positions of leadership as Garage Chairmen and Garage Committeemen, beating many candidates of the union administration and other groups.

Defendant Union is the certified collective bargaining representative of all medallion taxicab drivers and inside workers in the City of New York. The Union, having been organized in 1966 after a long and arduous struggle, then ratified its constitution and by-laws which had been prepared by the AFL-CIO's Regional Representative. The Constitution and By-Laws established the dues structure for the union. The dues were set at \$3.50 per month for all 5 day per week members; \$2.80 per month for all 4 day per week members; \$2.10 per month for all 3 day per week members; \$1.40 per month for all 2 day per week members and \$.70 per month for all one day per week members. (See Exhibit C attached to the Complaint). These were the dues that were collected by the union for approximately three(3) years until 1969, when an amendment to the constitution was proposed on notice to the membership and then approved

by the membership by a secret ballot vote at a special membership meeting held on February 11, 1969. This amendment to the Constitution was then approved by George Meany, President of the AFL-CIO in accordance with the Union's Constitution and By-Laws (See Exhibit D attached to the Complaint). After this final approval the dues increase was then implemented by the union.

This amendment to the union's Constitution, when noticed to the membership, was preceded by the following statement:

"In conformity with the Landrum-Griffin Act, this section will be voted upon by secret ballot."
(emphasis in original)

The union recognized at that time that any increase in dues could be implemented only after an affirmative vote by the membership by secret ballot.

I understand, from a letter allegedly sent by the AFL-CIO to this union (Exhibit A annexed to the Complaint) that in July, 1975 the Executive Council of the AFL-CIO recommended an increase in the minimum dues payable by DALU members to \$6 per month. Notification was sent to the union by letter dated August 11, 1975. Approximately five (5) weeks thereafter, the membership of the union was notified by the Secretary of the Union that the Union was increasing the dues of all members of this union to the sum of \$6 per month, regardless of category. (Exhibit B annexed to the Complaint). The Union, in this letter, apparently takes the position that it is required to increase the dues pursuant to the action of the Executive Council of the AFL-CIO and must take this action without vote of the membership. I firmly believe that this is merely a subterfuge to enable the union to raise dues without first submitting the question to a secret ballot vote of the membership as required by the Constitution of the Union, the DALU Rules and the LMRDA. As to the motives of the union leadership on this issue, it

is clear that they feel that a vote to increase the dues will be defeated by the membership, as well it should. This union's leadership, in the past few years, has negotiated regressive labor contracts, taken many steps backwards and has done little if anything to protect the right and interest of the membership. I fought, as an officer of the union, against these actions and finally ran against the present union administration in an effort to bring corrective action to this union.

Although I barely lost the election, since that time the NEW WATCH-DOG COMMITTEE has grown in strength and in recent garage elections won positions of responsibility as garage chairmen and committeemen in many garages. It is no wonder that the union does not want to give the NEW WATCH-DOG COMMITTEE and its members the right to speak and debate the issue of the dues increase. By raising the dues without a vote, this prevents the plaintiffs and others from debating, discussing and giving their opinions as to this dues increase. The union's action is clearly designed to discriminate against the NEW WATCH-DOG COMMITTEE members who would have the opportunity to speak to the membership at the time of the vote and register their opposition to this unwarranted dues increase. This violates the LMRDA Bill of Rights as well as the union's duty of fair representation.

It is also submitted that the very action of the AFL-CIO Executive Council in passing this dues increase in this manner is in violation of the law, its own constitution and DALU Rules. Even if were to be assumed that the Executive Council's action was valid in the first instance, it can be valid only until the AFL-CIO convention met. 1

understand that the AFL-CIO convention did not ratify the Executive Council's decision to increase the minimum dues. Even if it did ratify the Executive Council's action, this is still not legal as the union did not elect any delegates to attend the convention or vote on this issue. Further, for the AFL-CIO to decree that a local union must increase its dues without secret ballot vote of the membership is in violation of the DALU Rules, the union's Constitution and By-Laws and the LMRDA. It is believed that it did not intend this and anticipated a secret ballot vote of the membership on the dues increase and amendment to the union's constitution and by-laws. Similarly, for the local union to accept and implement the dues increase without the required secret ballot vote of the membership on the dues increase and on the amendment of the union's constitution and by-laws is also in violation of the DALU Rules, the union's constitution and by-laws and the LMRDA. In addition, there is nothing in any of the correspondence sent to the membership (Exhibits A and B attached to the Complaint) to indicate that the DALU Rules were even changed or amended to reflect this proposed increase in DALU membership dues. Even if the DALU Rules were changed, it would not be binding on the membership of the union herein as the increase in dues still has to be adopted by the union by amendment of its Constitution and By-Laws in accordance with the statutory secret ballot procedure.

The DALU Rules do not intend that the recommended minimum dues in Section 8 be mandatory and required of every DALU. Section 13 of the DALU Rules (Exhibit H attached to the complaint) clearly envisages a situation where the local union has not implemented the minimum dues

structure and establishes a penalty--that of losing defense fund benefits. If the minimum dues structure in Section 8 were a mandatory requirement there would be no need for the provision of Section 13 as the local union would clearly be in violation of the DALU Rules and subject to suspension and forfeiture of all benefits, not just one benefit. Even if it were argued that the DALU Rules seem to establish a minimum dues structure which is meant to be mandatory for the DALUs, and their members, this dues structure, if it involved a dues increase, would still have to be legally implemented by the local union and the DALU Rules. These Rules specifically provide that:

"The constitution or bylaw of each Directly Affiliated Local Union incorporate the substance of rule" 31 which provides as follows:

"31. Assessments and Increases in Initiation Fees or Dues. A local union may levy assessments or increase its initiation fees or dues only by a majority vote of the members by secret ballot, either (1) at a general or special membership meeting, held after reasonable advance notice of intention to vote on the question at that meeting; or (2) in a membership referendum." (See Exhibit I attached to the Complaint)

It is interesting and important to note that for the period from 1960 through August 1, 1973, the AFL-CIO DALU Rules provided, in Section 8 thereof, that the minimum dues to be collected from DALU members was \$2.50 per month. During the three year period, from 1966 to 1969, the dues collected from a significant part of the union's membership (all part time members and all members working three days per week or less) were less than the minimum dues recommended by the DALU Rules, Section 8 (See Exhibit F attached to the Complaint). The Constitution was drafted by the AFL-CIO's regional representative while the aforesaid DALU Rule was in existence. It must be assumed that it was perfectly acceptable for the union to charge less than the Section 8 minimum dues in light of the foregoing and in light of the fact that

no penalty was ever imposed on the union or any of its members for non-compliance with Section 8. Compliance was never required nor mandatory.

After the dues were increased in 1969 to \$3.50 per month for all 4 day per week members and \$2.50 per month for all 3 day per week or less members, the DALU Rules were changed on August 1, 1973 to provide that all DALU members shall pay dues of not less than \$3.00 per month. Again, a significant part of the membership of this union did not pay the minimum recommended dues as all members working 3 days per week or less were only required by the union to pay \$2.50 per month in dues (or \$5 every two months). This was again less than the stated DALU amount. This history proves conclusively that although DALU Rules apparently established recommended minimum dues to be collected from DALU members, this recommendation was rarely followed by this union and the union was not required to change its dues structure to comply with the DALU Rules, particularly Section 8 thereof.

The LMRDA, Section 101(a)(3) provides that except in the case of a federation of national or international labor organizations, the rates of dues of a local union shall only be increased upon

"the majority vote, by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot;

or in the case of a national or international union, dues can be increase by other methods, such as majority vote of the delegates at a convention; majority vote of the members in good standing in a referendum by secret ballot or majority vote of the members of the Executive Board of the

14

national or international union, which vote is effective only until the next convention of the said national or international union. Section 101(3)(A) and (B), LMRDA.

As can be seen by the letters from the AFL-CIO and the Union Secretary, the Union does not intend to conduct a secret ballot vote or membership referendum in defiance of the dictates of the law as well as the union's constitution and by-laws and the DALU Rules. This action by the defendants is contradictory to the requirements of the law and cannot be sustained. A secret ballot vote is mandated in the matter of a dues increase. The union seeks to avoid this vote by tortuous reasoning to the detriment of every member of this union who is deprived of his and her opportunity, not only to vote on the question of the dues increase, but to discuss, debate, argue, give his or her opinions and hear the opinions of others, on this issue of the dues increase. Such illegality cannot be condoned.

Plaintiffs are members of the opposition to the present union leadership and as such there is great antagonism between plaintiffs and the officers and executive council of the union. To pursue any internal union procedures in this matter is futile and useless. In the first place, there is no procedure relating to an action such as this or to a complaint such as plaintiffs make herein. The only union procedure has to do with the filing of charges against the officers and executive council, which, at best, would only result in disciplinary action against the present union leadership. This could not afford the sought after relief which is the vote on the dues increase. There is no union procedure for requiring this. There is also no union procedure to insure the other part of the sought after relief, an opportunity for the membership to be given the chance to discuss, debate and share

opinions as to the relative merits of the dues increase. In addition to the above, the union's disciplinary procedure relative to the filing of charges provides for the trial committee to be the Executive Council provided that if the charged party is a member of the Executive Council he or she shall not serve on the trial committee. As the Executive Council is being charged herein, there would be no persons to serve on a Trial Committee nor is there any union procedure to be adopted in such a situation. Further, the final step in the appeal procedure requires an appeal to the Executive Council of the AFL-CIO, also a charged party herein and the very body that took the initial complained of action. It can easily be seen that the internal union procedures are particularly inappropriate in this situation and that the pursuit of internal union remedies are not only inappropriate and incomplete, but would be unnecessary and futile. The remedy provided is inappropriate, the procedure is incomplete in that there is no one to serve on a trial committee and the time limits are such that the requested relief would be rendered moot by virtue of the delay since the intended dues increase is to be implemented as of November 1, 1975.

As stated, the only time the dues were increased in this union in the past, the increase was by amendment to the union's constitution and by-laws, as the dues structure is embodied in the constitution and by-laws of the union. The union apparently does not intend to take such action herein. The amendment to the constitution and by-laws requires notice, and a vote at a membership meeting and approval by the President of the AFL-CIO, none of which took place herein. The LMRDA and DALU Rules require secret ballot vote of the membership, again not to be undertaken herein. Discussion and debate of the dues increase will also be eliminated by this action of the union and lack of vote.

The collective bargaining agreement between the union, the employer association and the employers provides for a union shop clause. (See Exhibit M attached to the complaint). If a member does not pay dues he must be discharged from his employment upon notice. Thus, if a member protests the additional dues by not paying same, he is subject to losing his employment. Further, the non payment of dues puts a member out of good standing according to the union's constitution and by-laws and he shall lose all union benefits. The collective bargaining agreement provides that "an employee delinquent in dues payment shall lose all benefits under [the collective bargaining] agreement." Thus, a member who does not pay the dues increase will lose the union's death benefit, among other benefits, and the right to be covered for hospitalization, pension, bereavement days and every other benefit under the collective bargaining agreement. Further, if the member should leave the industry he will not be able to recoup the dues in the event of a favorable determination in the future. Non payment of dues will also subject the member to loss of all AFL-CIO membership benefits. Due to the fact that there is a checkoff in the contract, the union will automatically have the increased dues deducted from the member's wages, a considerable sum of money in light of the rather minimal earnings of most members of this industry. This 100%+ increase will hit especially hard in those situations where the man works only part time or infrequently and without approval by the membership will deny all members their right to participate in this vital decision. Many members, now gainfully employed, will be driven out of the industry or will lose their jobs by discharge. By implementing this increase on November 1, 1975, the economic consequences brought to bear on the members of this union will be disastrous.

It is submitted that for the foregoing reasons, the Union is not obligated to implement the dues increase automatically and should not do so without the required secret ballot vote of the membership. To refuse to allow this vote would effectively deprive the plaintiffs herein and all others similarly situated of fair representation in that the plaintiffs, members of the NEW WATCH-DOG COMMITTEE, cannot exercise their right to dispute the necessity for the dues increase and the membership will not be able to debate, discuss and most importantly, vote, by secret ballot, on the question of whether or not the dues increase should be approved.

Your deponent, and his fellow members of the NEW WATCH-DOG COMMITTEE of the union, and that class that we represent, have been and will continue to be irreparably harmed by being deprived of the right to vote on this dues increase and participate in the business of the union. As long as this situation is allowed to exist, union democracy is subverted and every member of this union will be severely harmed and damaged, in a way that cannot be compensated in law. The wages of every member of this union will be substantially diminished by this illegal and unauthorized action by the defendants, in addition to the fact that the loss of union and collective bargaining benefits as well as jobs will render economic catastrophe upon all the members of this union. An injunction is necessary to prevent this illegal action by the defendants.

This action is being brought on by Order to Show Cause due to the very short time limits involved herein since the union intends to implement this dues increase on November 1, 1975. Plaintiffs face

immediate and irreparable injury which cannot be compensated in damages and for which there is no remedy in law. To maintain the status quo, an injunction is necessary and thus, it is requested that this court issue a preliminary injunction to insure the membership's participation in the secret ballot vote for a dues increase as well as debate and discussion as allowed by the law, the AFL-CIO constitution, the DALU rules and the union's constitution and by-laws.

✓ No previous application for the within requested relief has been made.

WHEREFORE, plaintiffs respectfully request that this Court grant the following relief:

1) Restraining the defendant union, its officers and Executive Council from implementing a proposed dues increase intended by the union to be effective November 1, 1975;

2) Restraining the defendant union, its officers and Executive Council from denying and continuing to deny the plaintiffs and all others similarly situated the right to vote upon the said dues increase by secret ballot at a membership meeting called upon reasonable notice or in a secret ballot membership referendum;

3) Restraining the defendant union, its officers and Executive Council from denying and continuing to deny the plaintiffs and all others similarly situated the right to express their views, debate, give their opinions, meet and assemble with other members to discuss at a business meeting of the union the issue of the dues increase;

4) Restraining the defendant union, its officers and Executive Council from denying and continuing to deny the plaintiffs and all others similarly situated the right to express their views, debate,

give their opinions, meet and assemble with other members to discuss the proposed dues increase;

5) Requiring the defendant union to submit the proposed dues increase to the membership for approval by, (1) a secret ballot by a majority vote of the members in good standing voting at a general or special meeting of the membership, after reasonable notice of the intention to vote upon such question of the dues increase, or (2) a majority vote upon the question of the dues increase of the members in good standing voting in a membership referendum conducted by secret ballot;

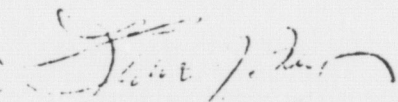
6) Declaring the proposed dues increase to be of no force and effect until the secret ballot vote by the membership;

7) Declaring the said proposed dues increase null and void if rejected by the membership after the secret ballot vote of the membership as requested herein,

together with such other and further relief as to this Court may seem just and proper in the premises.


THOMAS M. IANDOLI

Sworn to before me this
6th day of October, 1975


KENNETH J. FINGER
Notary Public, State of New York
No. 60-1215301
Qualified in Westchester County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20

NEW WATCH-DOG COMMITTEE, THOMAS M. IANDOLI,
Ray Cannon, James Nitecki, Ernesto Isaac, Peter
Behrens, Anthony Fasolina, Al Bernstein, Matthew
Riccardello, Harvey McLemore, Earl Winthal and
John Hajek

JUDGE GAGLIARDI

on behalf of themselves individually and
on behalf of all others similarly situated,

~~JUDGE GAGLIARDI~~ SUMMONS

Plaintiffs,

75 CIV. 4918

-against-

HARRY VAN ARSDALE, JR., President, CHARLES BONO, BEN GOLDBERG,
HARRY MENDEZ, ROBERT J. PANCALDO, ELIAS RICK, HOWARD WILLIAMS,
Vice Presidents, JOSEPH PARADISE, Secretary, RICHARD WM. ROGERS, SR.,
Recording Secretary, HERMAN MEYERS, Treasurer, SID PACK, LUIS PEREZ,
SAM EASTMAN, LEONARD FINE, ALBERT A. FOSTER, PETER TANNENBAUM, ARTHUR
STRICKLAND, EDWARD ZARR, Executive Council Members, as officers of
the NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO, and
individually; NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO
GEORGE MEANY, President, LANE KIRKLAND, Secretary Treasurer, JOSEPH D.
KEENAN, PAUL HALL, PAUL JENNINGS, A. F. GROSPIRON, PETER BOMMARITO,
FREDERICK O'NEAL, JERRY WURF, JAMES T. HOUSEWRIGHT, MARTIN J. WARD,
JOSEPH P. TONELLI, C. L. DELLUMS, RICHARD F. WALSH, I. W. ABEL, MAX
GREENBERG, MATHEW GUINAN, PETER FOSCO, FLOYD E. SMITH, S. FRANK RAFTERY,
GEORGE HARDY, WILLIAM SIDELL, ALBERT SHANKER, FRANCIS S. FILBEY, LEE W.
MINTON, HUNTER P. WHARTON, JOHN H. LYONS, C. L. DENNIS, THOMAS GLEASON,
LOUIS STULBERG, ALEXANDER J. ROHAN, AL. H. CHESSER, MURRAY H. FINLEY,
SOL STETIN, GLENN E. WATTS, Executive Council Members, as officers of the
American Federation of Labor and Congress of Industrial Organizations, and
individually; the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS,

75 Civ. _____

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon
KENNETH J. FINGER, Esq., plaintiffs' attorney, whose address is
14 Mamaroneck Avenue, White Plains, New York 10601,
an answer to the complaint which is herewith served upon you, within
20 days after service of this summons upon you, exclusive of the
day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

RAYMOND F. BURCHARDT,

Clerk of the Court

M. C. BERRAN

Deputy Clerk of the Court

[Seal of the Court]

Dated: October , 1975

OCT 6 1975

Note: This summons is issued pursuant to Rule 4 of the Federal Rules of
Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

22

NEW WATCH-DOG COMMITTEE, THOMAS M. IANDOLI,
Ray Cannon, James Nitecki, Ernesto Isaac, Peter
Behrens, Anthony Fasolina, Al Bernstein, Matthew
Riccardello, Harvey McLemore, Earl Winthal and
John Hajek

VERIFIED COMPLAINT

on behalf of themselves individually and
on behalf of all others similarly situated,

Plaintiffs,

-against-

HARRY VAN ARSDALE, JR., President, CHARLES BONO, BEN GOLDBERG,
HARRY MENDEZ, ROBERT J. PANCALDO, ELIAS RICK, HOWARD WILLIAMS,
Vice Presidents, JOSEPH PARADISE, Secretary, RICHARD WM. ROGERS, SR.,
Recording Secretary, HERMAN MEYERS, Treasurer, SID PACK, LUIS PEREZ,
SAM EASTMAN, LEONARD FINE, ALBERT A. FOSTER, PETER TANNENBAUM, ARTHUR
STRICKLAND, EDWARD ZARR, Executive Council Members, as officers of
the NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO, and
individually; NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO
GEORGE MEANY, President, LANE KIRKLAND, Secretary Treasurer, JOSEPH D.
KEENAN, PAUL HALL, PAUL JENNINGS, A. F. GROSPIRON, PETER BOMMARITO,
FREDERICK O'NEAL, JERRY WURF, JAMES T. HOUSEWRIGHT, MARTIN J. WARD,
JOSEPH P. TONELLI, C. L. DELLUMS, RICHARD F. WALSH, I. W. ABEL, MAX
GREENBERG, MATHEW GUINAN, PETER FOSCO, FLOYD E. SMITH, S. FRANK RAFTERY,
GEORGE HARDY, WILLIAM SIDELL, ALBERT SHANKER, FRANCIS S. FILBEY, LEE W.
MINTON, HUNTER P. WHARTON, JOHN H. LYONS, C. L. DENNIS, THOMAS GLEASON,
LOUIS STULBERG, ALEXANDER J. ROHAN, AL. H. CHESSEY, MURRAY H. FINLEY,
SOL STETIN, GLENN E. WATTS, Executive Council Members, as officers of the
American Federation of Labor and Congress of Industrial Organizations, and
individually; the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS,

75 Civ. 4918

Defendants.

23

COMPLAINT-CLASS ACTION

I. PRELIMINARY STATEMENT

1. Plaintiffs, members of the New York City Taxi Drivers Union, Local 3036, AFL-CIO (herein called the "union") bring this action against the union and its officers and Executive Council and the American Federation of Labor and Congress of Industrial Organizations (herein called the AFL-CIO) its officers and Executive Council, due to the defendants depriving the plaintiffs, and all others similarly situated, of their right to express their views, arguments and opinions, participate in deliberations and vote upon the proposed increase in union dues, effective November 1, 1975, and to express at meetings of the union their views upon the business of the increase of union dues, as guaranteed by the Labor Management Reporting and Disclosure Act (herein called the LMRDA), Sections 101 (a)(1), (2), and (3), 29 U.S.C. Sections 411 (a)(1), (2), and (3), and for defendants violating the "duty of fair representation" under Section 9 (a) of the National Labor Relations Act (herein called the NLRA)

29 U.S.C. Section 159 (a) . The defendants, by their officers and Executive Councils, have increased the dues of the members of the union without a secret ballot vote of the members of said union, and have refused to and are refusing to allow the issue of the dues increase to be voted on, raised and debated at a membership meeting, have failed to issue the required notice of the said dues increase prior to the vote thereon, have failed to have a vote of the membership in good standing by secret ballot as to whether or not the dues increase is to be approved or disapproved; have failed to allow the members of the union and plaintiffs to participate in the AFL-CIO's executive council and/or national convention to vote on the dues increase; all in violation of the LMRDA, the NLRA, the AFL-CIO's constitution and by-laws, of the Directly Affiliated Local Union (herein called DALU) Rules and/or the Union's constitution and by-laws.

2. The defendants assert that the authority to increase the dues was granted by the Executive Council of the AFL-CIO (See Exhibits A and B

annexed hereto) at a meeting thereof in July, 1975. The union takes the position that this is a valid act of the AFL-CIO and absolutely requires the union to collect the dues as increased to Six (\$6.00) ^{Dollars} /per month for all members of the union. By the strategm employed, the defendants have effectively denied the plaintiffs the right to express views, debate, deliberate and vote upon this dues increase.

3. Plaintiffs also raise a pendent state claim that the Union Officers, by failing to amend the union's constitution and by-laws to increase the dues, are in violation of the express provisions of the Union's constitution, and have breached their contractual obligation to the members of the union.

4. The plaintiffs ask that this Court enforce their federal statutory and contractual rights by requiring the union to present the dues increase to the membership for discussion, debate and vote by secret ballot and to void and set aside the dues increase if it is not voted on in a secret ballot by the membership upon due notice. Plaintiffs seek an order requiring the defendants to respect their statutory and contractual rights in relation to future dues increases. Plaintiffs also seek damages against the officers of the union for their breach of the union's constitution and for attorneys fees in this action. Plaintiffs desire to preserve internal union democracy and bring this action to benefit all the members of this union.

II. JURISDICTION

5. The jurisdiction of this Court is invoked pursuant to Section 102 of the Labor Management Reporting and Disclosure Act of 1959 29 U.S.C. Section 41 Declaratory relief is authorized pursuant to 28 U.S.C. Sections 2201 and 2202. The "fair representation" claim is brought under 29 U.S.C. Section 159 (a).

C. CLASS ACTION ALLEGATIONS PURSUANT TO LOCAL RULE 11.

6. The individual plaintiffs bring this action pursuant to rule 23 (a) and 23 (b) (2), Federal Rules of Civil Procedure (hereinafter called the FRCP)

on behalf of themselves and all others similarly situated, namely those members of New York City Taxi Drivers Union, Local 3036, AFL-CIO, who have been deprived of their rights to discuss, debate, participate in deliberations, express their views and vote upon the business of union meetings, to wit, the dues increase which is to take effect on November 1, 1975. The class is so numerous, consisting of, on information and belief, approximately 30,000 union members, as to make it impracticable for each to appear individually herein. There are pertinent questions of fact and law common to the class and plaintiffs herein will fully and adequately represent the interests of the class.

III. PARTIES

A. Plaintiffs

7. The plaintiff, NEW WATCH-DOG COMMITTEE, is an employee organization composed of members of the New York City Taxi Drivers Union, Local 3036, AFL-CIO whose purpose is to promote and encourage union democracy within the union, just and equitable treatment of all union members, and reform and correction of abuses within the union.

8. Plaintiff THOMAS M. IANDOLI is a citizen of the United States and a resident of the State of New York. He is a charter member and has been a member in good standing of the union since its inception. He was a working taxi cab driver in the City of New York for over twenty years. At the time this union was being organized, he was the Chairman of the Borough of Manhattan. Thereafter he was elected Secretary of the Union, in which position he served for approximately 8 years. Ray Cannon, James Nitecki, Ernesto Isaac, Peter Behrens, Anthony Fasolina, Al Bernstein, Matthew Riccardello, Harvey McLemore, Earl Winthal and John Hajek are all members in good standing of defendant union and working taxicab drivers in the City of New York. They are all citizens of the United States and residents of the State of New York, City of New York.

B. Defendants

9. Defendant HARRY VAN ARSDALE, JR., is President of the New York City Taxi Drivers Union, Local 3036, AFL-CIO. He is the chief executive officer with authority to supervise the affairs of the union in accordance with its constitution and by-laws.

10. CHARLES BONO, BEN GOLDBERG, HARRY MENDEZ, ROBERT J. PANCALDO, ELIAS RICK, HOWARD WILLIAMS are Vice Presidents of the union, JOSEPH PARADISE is Secretary, RICHARD WM. ROGERS, SR., is Recording Secretary, HERMAN MEYERS is Treasurer. These officials along with SID PACK, LUIS PEREZ, SAM EASTMAN, LEONARD FINE, ALBERT A. FOSTER, PETER TANNENBAUM, ARTHUR STICKLAND, EDWARD ZARR make up the Executive Council of the union. (See Exhibit P)

11. The above officers and Executive Council members, defendants herein, comprise the governing body of the union between semi-annual Membership meetings.

12. The defendant, New York City Taxi Drivers Union, Local 3036, AFL-CIO ("Union"), is a labor organization as defined in Section 152 (5) of the Labor Management Relations Act of 1947, 29 U.S.C. Section 187 (5), and Section 3 (i) of the LMRDA, having its principal place of business in the City, County, and State of New York.

13. GEORGE MEANY is President, LANE KIRKLAND, Secretary-Treasurer, JOSEPH KEENAN, PAUL HALL, PAUL JENNINGS, A. F. GROSPIRON, PETER BOMMARITO, FREDERICK O'NEAL, JERRY WURF, JAMES T. HOUSEWRIGHT, MARTIN J. WARD, JOSEPH P. TONELLI, C. L. DELLUMS, RICHARD F. WALSH, I. W. ABEL, MAX GREENBERG, MATHEW GUINAN, PETER FOSCO, FLOYD E. SMITH, S. FRANK RAFTERY, GEORGE HARDY, WILLIAM SIDELL, ALBERT SHANKER, FRANCIS S. FILBEY, LEE W. MINTON, HUNTER P. WHARTON, JOHN H. LYONS, C. L. DENNIS, THOMAS W. GLEASON, LOUIS STULBERG, ALEXANDER J. ROHAN, AL. H. CHESSER, MURRAY H. FINLEY, SOL STETIN, GLENN E. WATTS, make up the Executive Council of the AFL-CIO.

14. The above officers and Executive Council members, as stated in Paragraph 13, defendants herein, comprise the governing body of the AFL-CIO between annual conventions.

15. The defendant AFL-CIO is not a labor organization as defined in Section 152 (5) of the LMRDA.

16. The defendant AFL-CIO is not a labor organization as defined in Section 3 (i) of the LMRDA.

17. The defendant AFL-CIO has an office for the conduct of its business in the County, City and State of New York.

18. The defendant AFL-CIO is a federation of national or international labor organizations.

IV. STATEMENT

19. The union represents approximately 30,000 medallion taxi cab drivers in the City of New York. It has been in existence since 1966 when it was chartered by the AFL-CIO as a Directly Affiliated Local Union. Soon thereafter the designation DALU (for Directly Affiliated Local Union) was dropped from the name of the union.

20. When the union was first chartered, and the by-laws and constitution were adopted, the dues were established as follows: \$3.50 per month for each 5 day a week employee; \$2.80 per month for each 4 day a week employee; \$2.10 per month for each 3 day a week employee; \$1.40 per month for each 2 day a week employee and \$.70 per month for each 1 day a week employee. (Exhibit C)

21. Thereafter, pursuant to a notice given to the membership in the Taxi Drivers Voice, the official union publication, a Special Meeting was held on February 11, 1969 at which time the following amendment was voted on in a secret ballot vote:

Revision In Dues And Initiation Fee Structure:

(In conformity with the Landrum-Griffin Act, this section will be voted upon by secret ballot.) (emphasis in original)

'Membership dues shall be \$3.50 per month for each member working four (4) days or more per week.'

'Dues shall be \$2.50 per month for part-time members working three days a week or less' ..."

(Exhibit D)

22. At said February 11, 1969, the above amendment was adopted by the membership after approval by a secret ballot vote.

23. Thereafter, on or about the 18th day of March, 1969, GEORGE MEANY, President of the AFL-CIO approved the aforesaid amendment as submitted and approved by the membership.

24. Pursuant to said amendment, the dues were increased to \$3.50 per month for each member working four (4) days or more per week and \$2.50 per month for each member working three days a week or less.

25. To date, the dues, as stated in Paragraph 24, are those in effect in this union.

26. The DALU Rules, issued by the Executive Council of the AFL-CIO, between 1960 and August 1, 1973, provided as follows in Section 8 thereof:

"8. Dues. Directly Affiliated Local Unions shall require their members to pay dues of not less than two dollars and fifty cents (\$2.50) per month ...
Any member who is three months or more in arrears in payment of dues or assessments shall be automatically suspended from all rights and privileges of membership. Suspended members may be reinstated only upon the payment of three months' back dues, in addition to the dues for the current month, and a fee of one dollar (\$1.00) for reinstatement stamp."

(Exhibit E)

27. The DALU Rules, issued by the Executive Council of the AFL-CIO, as of August 1, 1973, provided as follows in Section 8 thereof:

"8. Dues. Directly Affiliated Local Unions shall require their members to pay dues of not less than three dollars (\$3.00) per month ... Any member who is three months or more in arrears in payment of dues or assessments shall be automatically suspended from all rights and privileges of membership. Suspended members may be reinstated only upon the payment of three months' back dues, in addition to the dues for the current month, and a fee of one dollar (\$1.00) for reinstatement stamp."

(Exhibit F)

28. The DALU Rules, as stated in Paragraph 27 hereof, are still in full force and effect.

29. The DALU Rules, Section 13, in effect between 1960 and August 1, 1973, also provided that:

"...no local union shall be entitled to receive benefits from the AFL-CIO defense fund unless the local union requires its members to pay at least two dollars and fifty cents (\$2.50) per month dues. ..."

(Exhibit G)

30. The DALU Rules, in effect since August 1, 1973 and now in effect, provide, Section 13 thereof, that:

"no local union shall be entitled to receive benefits from the AFL-CIO defense fund unless the local union requires its members to pay at least three dollars (\$3.00) per month dues, ..."

(Exhibit H)

31. The DALU Rules further provide as follows:

"REQUIRED PROVISIONS

(It is required that the constitution or by-laws of each Directly Affiliated Local Union incorporate the substance of rules 29 through 36)"

LOCAL UNION FINANCES

"31. ASSESSMENTS AND INCREASES IN INITIATION FEES OR DUES. A local union may levy assessments or increase its initiation fees or dues only by majority vote of the members by secret ballot, either (1) at a general membership meeting, held after reasonable advance notice of intention to vote on the question at that meeting; or (2) in a membership referendum."

(emphasis added)

(Exhibit I)

32. The DALU Rules also provide as follows:

"37. All Federal Labor Unions and Local Industrial Unions will continue to exist as local unions directly affiliated with the AFL-CIO. The AFL-CIO constitution points out that the integrity of each Directly Affiliated Local Union can remain as such as long as they so desire. It must be understood, however, that Directly Affiliated Locals can voluntarily agree to transfer their affiliation to the National or International Union if they so desire ..."
(emphasis added)

(Exhibit J)

33. The Unions's constitution and by-laws provides as follows:

"The finances of this organization shall be derived primarily from initiation fees and dues as provided in this constitution and by-laws. Membership dues in this union shall be:

"Membership dues shall be \$7.00 for each two month period for every member working 4 days or more per week.

"Membership dues shall be \$5.00 for each two month period for every member working 3 days a week or less.

"Members who are in arrears in their dues for 3 months shall be considered not in good standing in this union and shall not enjoy nor be entitled to any of the benefits, rights and privileges of this Local Union ..."

(Exhibit K)

34. The Union's Constitution and By-Laws also provide:

"AMENDMENTS

"In the event that this constitution and by-laws may be in conflict with the constitution and by-laws of the American Federation of Labor and Congress of Industrial Organizations Constitution shall prevail.

"Amendments to this constitution and by-laws shall become effective only upon the written authorization of the President of the American Federation of Labor and Congress of Industrial Organizations.

"Proposed amendments to this constitution and by-laws shall be submitted in writing to the union and shall be published in the official union publication "Taxi Drivers Voice" not less than 15 days prior to the next meeting of the General Membership Assembly where such amendment or amendments shall be acted upon.

"It shall take a vote of 2/3 of the members present for adoption."

(Exhibit L)

35. The collective bargaining agreement presently in existence between the Employer Association, and Employers and the Union provides as follows :

"Article IV. UNION SECURITY

"Section 1. Each employee who, on the effective date of this Agreement, is a member of the Union and each employee who becomes a member of the Union and each employee who becomes a member after that date shall, as a condition of employment, maintain his membership in the Union."

"Section 6. Insofar as permitted by law, an employee delinquent in dues payment shall lose all benefits under this Agreement during the tenure of said delinquency."

(Exhibit M)

36. Upon information and belief, the AFL-CIO Executive Council, on or about July 30, 1975, said that effective November 1, 1975, each Directly Affiliated Local Union, including the union herein, shall collect membership dues of not less than six dollars (\$6.00) per member per month.

(See Exhibit A)

37. That, upon information and belief, the AFL-CIO Executive Council anticipated that this decision be implemented in accordance with the Directly Affiliated Local Union Rules and in accordance with the constitution and by-laws of the union herein.

(See Exhibit A)

38. That, upon information and belief, this dues increase was not approved by the AFL-CIO convention.

39. That, upon information and belief, the AFL-CIO held its convention after this dues increase was established by the Executive Council, to wit, it met in September and October, 1975. That the AFL-CIO convention has ended.

40. That, upon information and belief, the Executive Council of the AFL-CIO did not change the DALU Rules to reflect the increase in dues and the Rules still provide that the minimum dues to be paid by DALU members are as stated in Paragraph 27 hereof.

41. That, upon information and belief, the Union herein, Local 3036, has not changed its constitution and by-laws to reflect the increase in dues as stated herein.

42. That, upon information and belief, if the union herein has changed its constitution and by-laws to reflect the increase herein, that change was made without notice or vote of the membership of the union, by secret ballot or otherwise.

43. That, upon information and belief, if the union herein has changed its constitution and by-laws to reflect the increase herein, that change has not been approved by the President of the AFL-CIO.

44. That on or about September 25, 1975, the union herein notified the plaintiffs and other members of this union that the union was increasing the dues for all members of the union to \$6.00 per month effective November 1, 1975, regardless of category.

45. That this increase is to be put into effect by the union without secret ballot, vote, or referendum of the membership.

46. That this increase is to be put into effect by the union without the amendment of the union's constitution and by-laws.

47. That the AFL-CIO convention did not change the DALU Rules, Section 8 therein at the convention held in September and October, 1975.

48. That upon information and belief, this union did not have any representatives attending the AFL-CIO convention as delegates.

49. That the membership of this union did not vote and elect any members to attend the AFL-CIO convention held in San Francisco in September and October, 1975.

50. That the union has already started implementing this dues increase.

51. That in implementing this dues increase in the manner as alleged herein, the defendants herein have denied the members of this union

the right to vote, discuss, participate and debate on the dues increase and the "business" of the meeting to vote thereon.

52. That in implementing this dues increase in the manner as alleged herein, the defendants have denied the membership of this union the right to vote on the dues increase by secret ballot.

53. That in passing the dues increase in this manner, the AFL-CIO has violated the LMRDA.

54. That in passing the dues increase in this manner, the AFL-CIO has violated the NLRA.

55. That in passing the dues increase in this manner, the AFL-CIO has violated its own constitution and by-laws. (See Exhibit N)

56. That in passing the dues increase in this manner, the AFL-CIO has violated the DALU Rules.

57. That in passing the dues increase in this manner, AFL-CIO has violated the union's constitution and by-laws.

58. That in implementing the dues increase in this manner, the union has violated the LMRDA.

59. In implementing the dues increase in this manner, the union has violated the NLRA.

60. That in implementing the dues increase in this manner, the union has violated the AFL-CIO's constitution and by-laws.

61. That in implementing the dues increase in this manner, the union has violated the DALU Rules.

62. That in implementing the dues increase in this manner, the union has violated its constitution and by-laws.

63. That the action of the AFL-CIO Executive Council, in increasing the minimum dues to be paid by DALU members, as alleged herein, was effective only until the next regular convention of the AFL-CIO, held in September and October, 1975.

64. That the increase in the minimum dues to be paid by DALU members was not voted on and approved by a majority vote of the delegates voting at the regular AFL-CIO convention held in September and October, 1975.

65. That the increase in the minimum dues to be paid by DALU members was not increased pursuant to any express authority contained in the constitution and by laws of the AFL-CIO.

66. That even if the AFL-CIO convention and/or Executive Board did establish an increase in the minimum dues for DALU members, this increase in the minimum dues for DALU members was not binding on the union herein.

67. That the union herein was not required to implement the dues increase established by the AFL-CIO.

68. That the union herein, if it chose to forego certain benefits in accordance with Section 13 of the DALU Rules, could forego implementing the increase in minimum dues as established by the AFL-CIO.

69. That the AFL-CIO did not conduct a referendum of the membership by secret ballot to approve the increase in minimum dues of DALU members.

70. That the AFL-CIO membership did not approve, by secret ballot in a membership referendum, the increase in minimum dues of DALU members.

71. That if this dues increase is implemented in November, 1975, and if any members of this union refuse to pay the increase, they will lose all AFL-CIO benefits and all union benefits.

72. That if this dues increase is implemented in November, 1975, many members will not be able to recoup their dues if this dues increase is rendered null and void at a later date.

73. That if this dues increase is implemented, many members will not be able to withhold the dues increase as the majority of the membership is on checkoff and the increase in dues will be deducted automatically.

74. That the increase in dues requested herein is an increase of almost 100% for all 4 day per week or more members of this union increasing their dues from \$3.50 per month to \$6.00 per month and over 100% for 3 day per week or less members, increasing their dues from \$2.50 per month to \$6.00 per month.

75. That by virtue of the size of the dues increase, many members will be prevented from working and forced out of the industry due to the large deduction from their wages.

76. That if any members withhold the increase in dues, by virtue of their being bound by the collective bargaining agreement herein which establishes a union shop, they will be subject to immediate discharge.

77. That internal union remedies are not appropriate herein for the following reasons:

a) There is no appropriate or relevant internal union procedure to challenge the issues raised herein;

b) The use of internal union procedures herein would be patently futile;

c) The internal union procedures prescribed by the union relate to charges and trials only and have no relevance herein;

d) The internal union procedures and appeals would have to be brought before the same parties who are defendants in this action;

e) The internal union procedures would have to be brought before the same parties who committed the complained of acts herein;

f) The appeals procedure and internal union procedures are lengthy ones and would take many months to complete, at the least;

g) That the internal union procedures herein would not be able to afford the relief sought by the plaintiffs herein and there is no procedure to protect the membership and the plaintiffs. (Exhibit 0)

V. CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

78. That the defendants and each of them by refusing to allow plaintiffs, an opposition group with the union, the opportunity to discuss, participate in, debate and vote upon the business of the dues increase at a membership meeting as provided in the AFL-CIO and union's constitution and by-laws, DALU Rules, and LMRDA and NLRA, have deprived them of their equal rights to participate in the deliberation, debate, business, discussion and voting upon the "business" of the meetings and the membership, in violation of 29 U.S.C. Section 411 (a) (1).

FOR A SECOND CAUSE OF ACTION

79. That the defendants and each of them by their acts herein, have refused to allow debate and discussion of the dues increase and voting of same, depriving the plaintiffs of their rights to "express at meetings of the labor organizations views upon any business properly before the meeting" in violation of 29 U.S.C. Section 411 (a)(1) and (2).

FOR A THIRD CAUSE OF ACTION

80. The union, by its officers, in willfully discriminating against opposition members of the union regarding their right to participate in union business, debate, discussions and vote on a dues increase, has breached its "duty of fair representation" under Section 9 (a) of the NLRA, 29 U.S.C. Section 159 (a).

FOR A FOURTH CAUSE OF ACTION

81. The AFL-CIO, by its officers and Executive Council, in increasing the dues of the plaintiffs and other members similarly situated, has violated its own constitution and by-laws.

FOR A FIFTH CAUSE OF ACTION

82. The union herein, by its Executive Council and officers, in increasing the dues of the plaintiffs and other members similarly situated, has violated its own constitution and by-laws.

FOR A SIXTH CAUSE OF ACTION

83. The union herein, by its Executive Council and officers, in increasing the dues of the plaintiffs and other members similarly situated, has violated the DALU Rules.

FOR A SEVENTH CAUSE OF ACTION

84. The union herein, by its Executive Council and officers, in increasing the dues of the plaintiffs and other members similarly situated in the manner as alleged herein, has violated the LMRDA.

FOR A EIGHTH CAUSE OF ACTION

85. The AFL-CIO by its Executive Council, in increasing the dues of the plaintiffs and other members similarly situated in the manner as alleged herein, has violated the LMRDA.

FOR A NINTH CAUSE OF ACTION

86. That the AFL-CIO by its Executive Council in increasing the dues of plaintiffs and their members similarly situated in the manner as alleged herein, has violated the DALU Rules.

FOR A TENTH CAUSE OF ACTION

87. That the AFL-CIO Executive Council's action in increasing the dues as alleged herein in being effective only until the convention, is null and void, and consequently, the dues increase is null and void.

FOR AN ELEVENTH CAUSE OF ACTION

88. That even if the AFL-CIO convention and/or its Executive Council did increase the minimum dues to be paid by DALU members, this method of increasing dues is not effective insofar as the union herein and members thereof are concerned as it is in violation of the union's constitution and

by-laws and/or the AFL-CIO constitution and by-laws, and/or the DALU Rules, and/or the LMRDA and/or the NLRA.

FOR A TWELFTH CAUSE OF ACTION

89. That even if the AFL-CIO convention and/or the Executive Council of the AFL-CIO did establish an increase in the minimum dues to be paid by DALU members, this dues increase is not effective as the union has not validly implemented the dues increase in accordance with the AFL-CIO constitution and/or the DALU Rules and/or the union's constitution and by-laws and/or the LMRDA and/or the NLRA.

FOR AN ELEVENTH CAUSE OF ACTION

90. That plaintiffs seek damages against the defendants and each of them for their acts in violation of the law and the constitution and by-laws of the union, the AFL-CIO and the DALU Rules.

FOR A FOURTEENTH CAUSE OF ACTION

91. That plaintiffs seek reasonable attorney's fees for the bringing of this action on behalf of the membership and in the interests of preserving internal union democracy and in protection of the LMRDA protected rights.

VI. PENDENT STATE CLAIMS

FOR A FIFTEENTH CAUSE OF ACTION

92. That defendant union, by its officers and Executive Council in failing to submit the amendment of the union's constitution and by-laws reflecting the dues increase to the membership for vote by secret ballot, breached its contractual obligation to abide by the terms of its constitution.

FOR A SIXTEENTH CAUSE OF ACTION

93. That defendant union, by its officers and Executive Council by the acts alleged in this Complaint, breached their contractual obligation set forth in the union constitution to strictly enforce the provisions of that constitution.

VII. EQUITY

FOR A SEVENTEENTH CAUSE OF ACTION

94. That the plaintiffs have no adequate remedy at law. They are being irreparably injured by having been^{and being} deprived of their rights to participate, debate and vote on the dues increase at union meetings, by having been^{and being} deprived of their right to discuss, debate, participate and give their opinions as to union business and the question of the dues increase which rights are secured by law and the union's constitution, by being required to pay increased dues when the chances of recovery of said sums by plaintiffs and others similarly situated are exceedingly minimal. Further, if they do not pay said dues increase of almost 100% for some members and over 100% for other members, they will lose all union benefits and stand to lose their jobs. Damages alone cannot compensate for these deprivations.

WHEREFORE, plaintiffs demand the following relief:

1) An order declaring that the Union by its officers and Executive Council violated 29 U.S.C. Sections 411 (a) (1) and/or (2), and/or (3) and/or the NLRA:

2) An order restraining the union, union's officers and Executive Council from further violations of the act;

3) An order declaring that the union by its officers and Executive Council violated the provisions of the union's constitution and by-laws and/or the DALU Rules.

4) An order declaring that the AFL-CIO by its officers and/or Executive Council and/or National Convention violated 29 U.S.C. Sections 411 (a)(1) and/or (2) and/or (3) and/or the NLRA.

5) An order restraining the AFL-CIO, its officers and Executive Council from further violations of the LMRDA;

6) An order declaring that the AFL-CIO by its officers and Executive Council violated the provisions of the AFL-CIO constitution and/or DALU Rules;

7) An order requiring the following:

a) That the defendant union and its officers and Executive Council be restrained from implementing the proposed dues increase intended to be effective November 1, 1975;

b) That the defendant Union and its officers and Executive Council be restrained from denying and continuing to deny the plaintiffs and all others similarly situated the right to vote upon the said increase in membership dues by secret ballot at a membership meeting called upon reasonable notice or in a membership referendum by secret ballot;

c) That the defendant union and its officers and Executive Council be restrained from denying and continuing to deny the plaintiffs the right to express their views, debate, give their opinions, meet and assemble with other members to discuss at a business meeting the business of the dues increase which is properly a matter before a business meeting;

d) That the defendant union and its officers and Executive Council be restrained from denying and continuing to deny the plaintiffs the right to express their views, debate, give their opinions, meet and assemble with other members to discuss the proposed dues increase;

e) That the defendant union be required to submit the proposed dues increase to the membership for approval by a secret ballot by a

majority vote of the members in good standing voting at a general or special meeting of the membership, after reasonable notice of the intention to vote upon such question of the dues increase or by a majority vote of the members in good standing voting in a membership referendum conducted by secret ballot;

f) That the proposed dues increase intended to be effective November 1, 1975 be declared to be of no force and effect until a secret ballot vote is taken by the membership as requested herein;

g) That said proposed dues increase shall be declared null and void if rejected by the membership after the secret ballot vote of the membership as requested herein.

8) An order declaring that the union's officers and Executive Council breached their contractual obligations set forth in the union constitution to submit the amendment of the by-laws to increase the dues to a secret ballot, membership vote, or referendum;

9) An order declaring that the union's officers breached their contractual obligations set forth in the union's constitution to strictly enforce the provisions of the union's constitution;

10) An order awarding compensatory and punitive damages against each named officer and Executive Council member of the union and the AFL-CIO individually;

11) An order awarding reasonable attorney's fees to counsel for the plaintiffs;

12) An order awarding the costs and disbursements of this action;

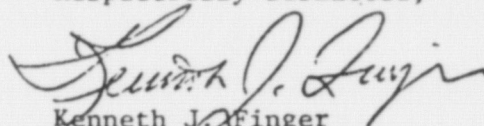
13) Retention of jurisdiction of this action; and

14) Such other and further relief as may be necessary or appropriate in the circumstances.

Dated: New York, New York

October 6, 1975

Respectfully submitted,



Kenneth J. Finger
Attorney for the Plaintiffs,
14 Mamaroneck Avenue
White Plains, New York 10601
(914) 949-0308

VERIFICATION

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

THOMAS M. IANDOLI, being duly sworn, hereby certifies that he is a plaintiff in the foregoing action, has read the foregoing complaint and that to the best of his knowledge it is true except as to those matters stated to be upon information and belief and as to those matters he believes them to be true.

/s/
 THOMAS M. IANDOLI

Sworn to before me this 6th
 day of October , 1975

KENNETH J. FINGER
 Notary Public, State of New York
 No. 60-1215301
 Qualified in Westchester County
 Commission Expires March 30, 1977

SCHEDULE OF EXHIBITS TO COMPLAINT

- A. AFL-CIO letter of August 11, 1975
- B. Union letter of September 25, 1975
- C. Union Constitution regarding dues as initially established.
- D. Taxi Drivers Voice regarding February 11, 1969 dues increase
- E. 1960 to 1973 D.A.L.U. Rule # 8
- F. August 1, 1973 D.A.L.U. to date Rule # 8.
- G. 1960 to 1973 D.A.L.U. Rule # 13
- H. August 1, 1973 D.A.L.U. to date Rule # 13.
- I. Present D.A.L.U. Rule # 31.
- J. Present D.A.L.U. Rule # 37.
- K. Union constitution and by-laws dues provision as presently in effect.
- L. Union constitution and by-laws amendment procedure.
- M. Collective Bargaining Agreement, Article IV.
- N. AFL-CIO Constitution excerpts.
- O. Union constitution and by-laws charges and trials procedure.
- P. Union constitution and by-laws section regarding duties of officers and Executive Council.

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NEW WATCH-DOG COMMITTEE, ET AL,

75 Civ. 4918

LPG

Defendants.

2. Effective November 1, 1975 dues payable to Local 3036 by taxi workers will be increased to \$6.00. This increase has been mandated by the Executive Council of the AFL-CIO, of which Local 3036 is a directly affiliated local union. (See Exhibit "1" annexed) On this basis, notice of the increase was sent to participants in Local 3036. (See Exhibit "2")

3. In their papers, plaintiffs have claimed that Local 3036 somehow denied members the right to discuss the issue of the dues increase. I see nothing in those papers that would even tend to support that allegation. To the contrary, Local 3036 has held two general membership meetings in the past six months, both at Manhattan Center. The last meeting was on October 8, 1975, after all members had been sent notification of the dues increase and the reasons therefor. However, no one at the meeting raised the issue of the dues increase. Plaintiffs took the floor on more than one occasion to express their views, but not on the subject of the dues increase. The fact is that no one has ever been denied by the Union the right to speak freely about dues at membership meetings or elsewhere. What plaintiffs are actually saying is that they want to debate the subject of dues as a preliminary to voting on dues. The issue, then, is again one of the validity of the action taken by the AFL-CIO, and not the right to speak at or participate in Local 3036 membership meetings.

4. There are at least two distinct factual misimpressions in plaintiffs' papers that should be corrected. A) On page 12 of the Iandoli affidavit, that deponent refers to himself and "his fellow members of the NEW WATCH-DOG COMMITTEE of the union, and that class that we represent...." The so-called "Committee" is not a "Committee of the Union", which of

course must be created under the auspices of the Local's Executive Council. This group, which misrepresents itself as an official organ of the Union consists of a handful of individuals who sought office in the 1974 election of officers and lost. Having failed to win representative status by election, they now hope to acclaim themselves a "Committee of the Union" and represent a class of members. Their papers, sprinkled as they are with political sentiments of a partisan nature, demonstrate their lack of adequate representative capacity. This so-called "Committee" should therefore be understood for what it is. B) Additionally, paragraph 34 of the Complaint drastically misquotes the Local's Constitution. This is how the "Amendments" section of the Constitution actually reads: "In the event that this Constitution and By-Laws may be in conflict with the Constitution and By-Laws of The American Federation of Labor and Congress of Industrial Organizations, The American Federation of Labor and Congress of Industrial Organizations Constitution shall prevail." Plaintiffs' version might well lead to a different conclusion, but it is a misquotation.

5. On the matter of the application for a preliminary injunction, I have consulted with all the executive officers of Local 3036 and am authorized to state that all monies collected as part of the dues increase effective November 1, 1975 (over and above current regular dues) will be

segregated, will not be commingled with the Local's general funds and will be held in escrow pending the disposition of this proceeding. The money will be available to be returned by mail or in person should the Court so direct.

6. It should be brought to the Court's attention that if the dues increase is not collected prospectively as directed by the AFL-CIO, many thousands of dollars will be lost. There would be no feasible way to recover the money, for a variety of technical and other practical considerations. Therefore the directive of the AFL-CIO would be negated if the increase were not implemented according to the schedule provided.

Robert J. Panca do

Sworn to before me this
16th day of October, 1975

JOHN J. [illegible] 1975

AFFIDAVIT OF ZACH LONSTEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
NEW WATCH-DOG COMMITTEE, et al,

Plaintiffs,

- against -

75 Civ. 4918

HARRY VAN ARSDALE, JR., President,
et al,

LPG

Defendants.

-----x
STATE OF NEW YORK)
(SS.:
COUNTY OF NEW YORK)

ZACH LONSTEIN, being duly sworn, deposes and says:

1. I am President of Transportation Computing Sciences Corp. ("TCSC"), which is the computer service for the New York City Taxi Drivers Union, Local 3036, AFL-CIO and most of the taxicab fleet industry.

2. TCSC has been advised that beginning with the monthly dues check-off for November 1, 1975 dues for all categories of members of Local 3036 will be \$6.00. I am told that the two other computer firms that service the remainder of the taxicab fleet industry have also been so advised.

3. I learned of this lawsuit from the attorney for Local 3036. At that time he requested that TCSC propose a contingent plan for refunding the increased portion of dues should the Court rule that the increase was not passed in the proper procedural manner.

4. While it might be premature to go into the specifics of a computer program, a program for refunding such sums could be easily devised. The Union's computerized master membership file contains the correct addresses for the great majority of Union members. Those whose correct addresses are not listed need simply report to the Union's offices in Manhattan and apply for a refund.

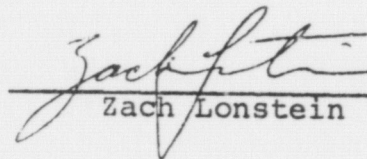
5. There are other reasonable approaches to the problem. Posting notices on garage bulletin boards would get the word out to members of their eligibility for refunds, should the Court so declare. Still more direct notification is also possible.

6. A computer program could also be run whereby persons entitled to a refund would receive an appropriate credit towards future dues.

7. I further believe that it would be feasible to return money directly as an addendum to the individual's paycheck.

8. If, however, TCSC and the other computer firms servicing the taxicab fleet industry are told to collect November dues at the old rate and are then told to collect at a later time the "increase" portion of the dues payment, the logistical problems would be burdensome indeed. TCSC and the other services have already programmed their computers for the

dues increase. If partial retroactive deductions are permitted and implemented, there will have to be substantial changes in the programming. For technical reasons beyond the scope of this affidavit, it is my firm opinion that refunding amounts collected would entail a far simpler process than the additional retroactive check-off.


Zach Lonstein

Sworn to before me this
16th day of October, 1975



IRWIN GELLER
Notary Public, State of New York
No. 03409821
Qualified in Bronx County
Commission Expires March 30, 1977

AFFIDAVIT OF LANE KIRKLAND
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW WATCH-DOG COMMITTEE, et al)
)
v.)
)
HARRY VAN ARSDALE, JR., etc.,)
et al)

75 Civ. 4918

AFFIDAVIT

1. My name is Lane Kirkland. Since July 1, 1969 and to and including the present time I have been the Secretary-Treasurer of the American Federation of Labor and Congress of Industrial Organizations. Pursuant to Article VII of the AFL-CIO Constitution, I am the custodian of the Federation's books and records.

2. I have attached to this Affidavit true and correct printed copies of the AFL-CIO Constitution as amended by the 2nd Constitutional Convention of the AFL-CIO, December 5-12, 1957, and as amended by the 10th Constitutional Convention of the AFL-CIO, October 18-23, 1973, of the Rules Governing Directly Affiliated Local Unions issued by the Executive Council of the AFL-CIO as issued on February 14, 1956 and as amended through August 1, 1973, of the Report of the Executive Council of the AFL-CIO to the 11th Constitutional Convention, which opened October 2, 1975, of the Proceedings of the 11th Constitutional Convention of the AFL-CIO, Second Day-Friday Morning Session, October 3, 1975, and of a letter dated August 11, 1975 I sent to every one of the AFL-CIO's Directly Affiliated Local Unions.

3. I was present at the July 30, 1975 meeting of the Executive Council of the AFL-CIO and of my personal knowledge gained thereby state that the Report of the Executive Council to the 11th Constitutional Convention, page 44, correctly states the action taken by the Executive Council with respect to minimum dues of Directly Affiliated Local Union members.

4. I was present at the First Day-Thursday Morning Session, October 2, 1975 of the 11th Constitutional Convention of the AFL-CIO and of my personal knowledge gained thereby state that a copy of the Report of the Executive Council was provided to each delegate to the Convention.

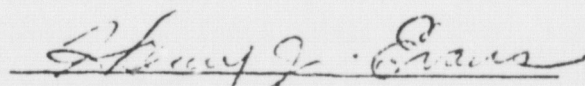
5. I was present at the Second Day-Friday Morning Session, October 3, 1975 of the 11th Constitutional Convention of the AFL-CIO and of my personal knowledge gained thereby state that pages 15-21 of the printed Proceedings correctly state the action taken by the Convention with respect to the Report of the Committee on the Executive Council Report.

6. I have reviewed the books and records of the AFL-CIO and state that aside from the Executive Council action of July 30, 1975, no amendments to either the AFL-CIO Constitution or the Rules Governing Directly Affiliated Local Unions relevant to the raising of minimum dues of Directly Affiliated Local Union members have been made since the printed copies of that Constitution and those Rules attached hereto were prepared.



Lane Kirkland
Secretary-Treasurer, AFL-CIO

Subscribed and sworn before me
this 16th day of October
1975



Henry J. Evans, Notary Public

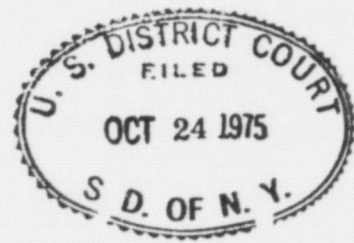
My Commission Expires December 14, 1979

MEMORANDUM DECISION OF THE DISTRICT COURT

54

copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
NEW WATCH-DOG COMMITTEE, THOMAS IANDOLI,
et al.,

Plaintiffs,

-against-

HARRY VAN ARSDALE, JR., President, et al.,

Defendants.
-----X

75 Civ. 4918

MEMORANDUM
DECISION

#43288

GAGLIARDI, D. J.

A group of New York City taxidivers has brought this action against the New York City Taxi Drivers Union, Local 3036, AFL-CIO (the "Local"), and the AFL-CIO seeking a declaratory judgment voiding a union dues increase and an injunction barring implementation of the increase without a vote of the Local membership.

The dues increase at issue was adopted in July, 1975 by the Executive Council of the AFL-CIO and subsequently included in a report of the Executive Council approved by an AFL-CIO Delegates Convention in October, 1975. Plaintiffs allege that any dues increase affecting a local must be approved by a membership vote or referendum pursuant to §101(a)(3) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §411(a)(3) (the "Landrum-Griffin Act") which provides:

Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization. . . shall

not be increased, and no general or special assessment shall be levied upon such members, except --

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; . . .

Plaintiffs also allege pendent state claims that the AFL-CIO is without power to direct local union increases and that the increase was implemented in violation of various Local or AFL-CIO rules.

A hearing on an application for a preliminary injunction was held on October 16, 1975.

The major flaw in plaintiffs' claim under the Landrum-Griffin Act is glaringly revealed in the first sentence of the statute - "except in the case of a federation of national or international labor organizations." It is abundantly clear that the AFL-CIO is such a "federation" within the meaning of the statute. Moreover, the legislative history of the Landrum-Griffin Act demonstrates that by this clause, the AFL-CIO was specifically excluded from the requirements of this Section. 1 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 949 (statutory analysis by the Senate Committee on Labor and Public Welfare). Thus, plaintiff has not shown prob-

able likelihood of success on the merits, nor has plaintiff raised any serious issues of federal law and a preliminary injunction is not warranted. Gresham v. Chambers, 501 F.2d 687, 691 (2d Cir. 1974).

With regard to the pendent state claims, it is well-settled that "the doctrine of pendent jurisdiction is a doctrine of discretion and not of a plaintiff's right," Abrams v. Carrier Corporation, 434 F.2d 1234, 1254 (2d Cir. 1970), cert. denied, 401 U.S. 1009 (1971). If the federal claim is not one of "substance," Abrams v. Carrier, supra, or - as the test is variously phrased - if the federal claim is "obviously without merit," Katz Manufacturing Co. v. Chesebrough-Pond's, Inc., 211 F. Supp. 815, 822 (S.D.N.Y. 1962), aff'd, 317 F.2d 679 (2d Cir. 1963), or if the claim will not "withstand a motion to dismiss for failure to state a claim," Edward J. Moriarty & Co. v. General Tire & Co., 289 F. Supp. 381, 385 (S.D. Ohio 1967), then the court may properly refuse to entertain the state claims. In the instant case, the court concludes that under any of these tests, there is no reason to warrant the retention of the pendent claims.

For the foregoing reasons, the plaintiffs' motion for preliminary relief is denied and the pendent state claims are dismissed.

So Ordered.

U.S.D.J.

Dated: New York, New York
October 24, 1975

ORDER OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NEW WATCH-DOG COMMITTEE, THOMAS IANDOLI,
et al.,

Plaintiffs,

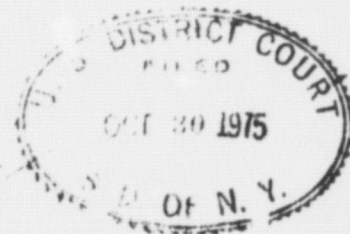
- against -

HARRY VAN ARSDALE, JR., President, et al:

Defendants
-----X

75 Civ. 4918

ORDER



UPON the appearance of all parties herein; and

UPON all the papers and proceedings heretofore had herein; and

UPON the agreement of all parties herein that this matter
be treated as a motion for summary judgment pursuant to
Rule 56 of the Federal Rules of Civil Procedure as there are
no issues of fact; and

UPON the opinion of this Court, filed on the 24th day of October,
1975;

it is hereby ORDERED that summary judgment be granted to the
defendants.

Dated: New York, N.Y.
October , 1975

U.S.D.J.

JUDGMENT ENTERED 10/30/75

Agreed to by Plaintiff

A 201 Affidavit of Service by Mail
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

NEW WATCH -DOG COMMITTEE, et al
Plaintiffs- Appellants

- against -

HARRY VAN ARSDALE et al,
DEFENDANTS ~~ABHEDDENE~~ Appellees.

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Eugene L. St. Louis being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at

1235 Plane Street, Union, N.J. 07083
That on the 5th day of January 1976, deponent served the annexed *Joint*

appends upon *see attached* attorney(s) for
see attached in this action, at *see attached*

the address designated by said attorney(s) for that
purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a
Post Office Official Depository under the exclusive care and custody of the United States Post Office
Department, within the State of New York.

Sworn to before me, this 5th day of January 1976

Robert T. Brin

Eugene L. St. Louis
Print name beneath signature
EUGENE L. ST. LOUIS

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

J. ALBERT WOLL
815 15th Street
Washington D. C. 20006
(202) 7 1717
Attorney for Defendants- Appellees

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Attorney for Defendants- Appellees
Harry Van Arsdale and Local Union 3036

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Attorney for Plaintiffs- Appellants